(3)

IN THE COURT OF HONOURABLE HIGH COURT OF CHHATTISGARH AT BILASPUR (CHHATTISGARH)

CRIMINAL APPEAL NO .....31..... / 2007

(69) Appeallant / Accused — Biselal Goand son ofAnjori Goad aged about 40 years Residing at village Sivani police station Gatapar District Rajnandgaon (Chhattisgarh)

Filed on 3-1-08
by Shri Ishwar Pandey Advocate

R. to DR 5

Verses

Respondent / Prosecution — State of Chhattisgarh through police station centre Gatapar Dist. Rajnandgoan

CRIMINAL APPEAL UNDER SECTION 374 (2) OF CODE OF CRIMINAL PROCEDURE

Sentence

(21)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA.NO..31.... **सन् 2002**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Satish K. Agnihotri, JJ.

21-7-2006

Mr. Shailendra Dubey, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 20th July, 2001, passed by the Additional Sessions Judge, Khairagarh, District: Rajnandgaon in Sessions Trial No.126/1999, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

Brief facts of the prosecution case are that on 5-10-1998 at about 9 a.m. when Pujari Baba @ Chhabilal was in front of the house of Ankalu, the accused all of a sudden appeared and attacked Pujari Baba with an axe as a result of which he died instantaneously. The matter was reported by Kapurdas, village Kotwar, on which the F.I.R. (Ex.P-8) was registered for commission of offence under Section 302 of the I.P.C. The Investigating Officer left for the scene of occurrence, after giving notice Ex.P-1 to the Panchas prepared Panchanamas Ex.P-2 & P-3 of the body

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A.31/..... सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of Pujari Baba. Blood stained soil and plain soil as well as hair of the head of the deceased were taken into possession under Ex.P-4. While in police custody, the accused gave memorandum Ex.P-5 and in pursuance of that, he got recovered the axe under Ex.P-6. Merg intimation Ex.P-7 was given by Kapurdas. Recovered articles were sent for Forensic Science Laboratory, Sagar, from where the report Ex.P-8 (second) was received. The body of Pujari Baba was sent for post-mortem examination to Community Health Centre, Khairagarh, where Dr. S.S. Chhabra (PW-5) conducted post-mortem on the body of Pujari Baba and prepared the post-mortem report Ex.P-9. Site plan Ex.P-11 was prepared by the Patwari.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Khairagarh, who in turn committed the case to the Sessions Judge, Rajnandgaon, from where learned Additional Sessions Judge, Khairagarh, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined six witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent, therefore, he be acquitted.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard learned counsel for the parties.

As far as the question of homicidal death of Pujari Baba is concerned, same has not been disputed by learned counsel for the appellant. Even otherwise, Dr. S.S. Chhabra (PW-5), who conducted post-mortem on the body of Pujari Baba, has stated in his evidence that there was an injury on the right side of head, another injury was on the right side of face and the third injury was on chin. On dissection of the body, on the right side of head there was an injury in the size of 2" x 1" x ½", there was fracture of bone and the injury was extending upto the brain material. The cause of death was fracture of skull bone and injury on head. His report is Ex.P-9. Premlal (PW-1) and Siyaram (PW-2) are the eyewitnesses who have stated in their evidence that accused Biselal attacked deceased Pujari Baba with axe as a result of which Pujari Baba fell down and died. In view of the above evidence, it is established that the death of Pujari Baba was homicidal in nature.

As far as involvement of the accused/appellant in committing the murder of Pujari Baba is concerned, Premlal (PW-1) has stated in his evidence that in the morning at about 10 a.m. he along with Siyaram, Kashiram and other villagers were sitting on the occasion of festival in the village and in their presence Biselal attacked Pujari Baba in front of the house of Ankalu with axe as a result of which Pujari Baba fell down and died. The matter was reported to the Police. Siyaram (PW-2) has corroborated the above evidence. The axe in question was also taken into possession. In

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.31/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the cross-examination of these witnesses, defence has not been able to elicit any circumstance, which makes the evidence of these witnesses untrustworthy or unreliable. The evidence of these witnesses inspire confidence of the Court. Therefore, we are of the considered opinion that the finding of the trial Court regarding involvement of the accused in attacking the deceased is correct and based on legal clinching evidence.

Learned counsel for the appellant argued that from the evidence of eyewitnesses it is established that accused Biselal attacked the deceased all of a sudden without any premeditation and without having any animosity against the deceased. At that time, the accused was suffering from insanity i.e. unsoundness of mind and there was no intention of the accused to cause the death of Pujari Baba. Therefore, offence against the accused does not extend beyond Section 304 Part-II of the I.P.C. He placed reliance on the judgment of Kerala High Court in the matter of **Hussain vs. State of Kerala** reported in **I (2006) CCR 221 (DB)**.

On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

Section 84 of the I.P.C. envisages that "nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law". Section 105 of the Indian Evidence Act, 1872, envisages that "when a person is accused of any offence, the burden of proving

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CR.A.31/..... सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, 1860 (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances". Therefore, in view of the provisions of Section 105 of the Indian Evidence Act, 1872, the burden is on the accused to prove his case that at the time of commission of crime on account of unsoundness of mind he was not capable of knowing the nature of the act that what he was doing is either wrong or contrary to law. Even the Apex Court in the matter of **T.N. Lakshmaiah v. State of Karnataka** reported in **AIR 2001 SC 3828** has held that the burden of proving the exception under Section 84 is on the accused. Similar is the judgment of Apex Court in the matter of **State of M.P. v. Ahmadulla** reported in **AIR 1961 SC 998** in which it has been held that the burden of proving that the mental condition of the accused was not proper at the time when the said offence was committed lies on the accused in view of Section 105 of the Evidence Act. It is a settled position in law that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts unless the contrary is proved.

Therefore, in order to seek protection of Section 84 of the I.P.C. the accused was required to prove by adducing evidence that at the time of the incident he was of unsound mind. If we look into the record of the case in hand, in the first instance, at the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....G.A.31/..... सन् 200 2

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

beginning of trial, the defence ought to have moved an application under Section 328 of the Cr.P.C. for getting the accused medically examined in order to ascertain as to whether the accused was suffering from unsoundness of mind at the time of commission of crime, but, there is no such plea raised at the time of trial. Even in cross-examination of the witnesses, the witnesses have categorically stated that the accused was not suffering from any mental illness. Even in the statement under Section 313 of the Cr.P.C., the accused has not raised any such plea that on account of unsoundness of mind he was not capable of knowing as to what he was doing is contrary to law. Therefore, there is not an iota of evidence on record through which the Court can reach to the conclusion that at the time of commission of crime the accused was suffering from unsoundness of mind.

As far as the judgment cited by learned counsel for appellant is concerned, in para 37 of the said judgment {Hussain (supra)} circumstances of that case have been narrated, one of the circumstances was that after the murderous attack on the deceased the accused did not make any attempt to escape from there. The fourth circumstance was that soon after the incident the accused was seen lying down on the muddy ground and he remained motionless and unperturbed even after a bucket of cold water was poured over him. He lay there for hours till the police came and took him into custody. The fifth circumstance was that the testimony of DW 2, the Psychiatrist shows that the accused

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

had a history of paranoid schizophrenia one of the manifestations of which is that the patient may turn violent even without any provocation and during the morbid state he may not be in a position to understand the nature and consequences of his act. The sixth circumstance was that during his examination under Section 313, Cr.P.C. the answer of the accused to most of the questions was that he does not remember. To some questions he did not give any reply. Whereas, in the present case, there are no such circumstances brought on record. The accused answered all the questions. There is no medical or other evidence on record, which shows that the accused was suffering from mental illness. As such, the above judgment is of no help to the accused in the present case. Therefore, the accused is not entitled for protection under Section 84 of the I.P.C.

The case of the appellant is not covered under Exception 4 to Section 300 of the I.P.C., which envisages that culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of a passion upon a sudden quarrel. There was no sudden fight and there was no sudden quarrel. Therefore, present case is not covered under Exception 4 to Section 300 of the I.P.C.

The manner in which the accused attacked on the head of the deceased with deadly weapon like axe, as a result of which skull bone was fractured and the injury went up to the brain and as per the doctor's opinion this injury was the cause of death, as

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No.36/.. **सन् 2002**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	per the settled law, intention of the accused can be ascertained from the nature of the weapon used, part of the body where it was inflicted and that the accused used dangerous weapon like axe for the purpose of attacking the deceased, that too on the vital part of the body. Therefore, intention of the accused was writ large to cause the death of the deceased. **In the result, we do not find any illegality or infirmity in the impugned judgment and the appeal is devoid of merit, same is accordingly, dismissed.** **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **Satish K. Agnihotri** **Judge**

Soma

P.T.O.